

THE DANCERS FORUM COMPACT

For A Working Artistic Relationship

Between

Dancers and Choreographers

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Preface

"The Dancers Forum Compact for a Working Artistic Relationship between Dancers and Choreographers" is designed to help us pay more attention to each other and how we work. Dancers Forum and those who created the Compact believe that by following the guidelines it lays out, choreographers and dancers will strengthen their relationships with each other. The strengthening of these essential, symbiotic relationships will benefit the creative work as well as the individuals engaged in it.

As practitioners we recognize the challenges faced by both dancers and choreographers. We hope that the Compact will ameliorate the difficulties and increase the rewards arising from our own work, and from the work of others.

This document has its origins in 1996 at the Dance Theater Workshop (DTW) retreat for dancers, "Doing the Dance." There, the notion of a list of guidelines or responsibilities for dancers and choreographers was proposed. Two years later, participants in the Dance Theater Workshop retreat for dancers and choreographers, "Art of the Matter," reiterated the need.

Dancers Forum was founded immediately following the 1996 DTW retreat and has met monthly since that time. The ideas of a bill of rights and conflict resolution have been central to Dancer Forum activities since the group's inception. Its members are dance professionals--dancers and choreographers, among others--committed to improving the welfare of dancers in the belief that doing so will allow all aspects of and participants in the art form to flourish.

In June of 2001 another retreat was organized by co-sponsors Dancers Forum and DTW. The retreat, entitled "Finding the Balance," targeted dancers, choreographers, presenters, critics, funders, and other arts workers. There, a broad-based group of participants committed themselves to preparing a document that would apply to the present day working relationships between dancers and choreographers. This group attended the Dancers Forum meeting the day after the retreat and agreed to develop such a document by the end of the summer.

After determining by consensus the content, structure, and language of the Compact, a draft dated August 3, 2001 was disseminated via email to Dancers Forum members and choreographers of Pentacle's Help Desk Project. Copies were also printed and made available at Joyce Soho and Movement Research. The September Dancers Forum meeting was devoted to feedback on the Compact. After additional changes were made the Compact was approved at the following Dancers Forum meeting on October 1, 2001, and copyrighted in Fall 2002.

The creators of the Compact envision this document as a beginning point of an ongoing process among professional dancers and choreographers. They intend to develop procedures for future changes and additions to the Compact as the need arises within the dance community.

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Dancers Forum gratefully acknowledges the numerous individuals not mentioned above, who participated in activities that anticipated the writing of the Compact, specifically the organizers and participants in the DTW retreats “Doing the Dance” (1996), “Art of the Matter” (1998), and “Finding the Balance” (2001). Through the processes that occurred at these retreats--sharing experiences, identifying concerns, and formulating and developing ideas--those individuals contributed the foundation upon which the Compact is built. The Compact is a tangible representation of extended, collaborative, creative problem solving among numerous individuals who have dedicated their lives to the art, practice, and profession of dance.

Dancers Forum also gratefully acknowledges the donation of meeting space toward the creation of the Compact by Pentacle and Joyce Soho; technical assistance by Dance Theater Workshop; legal services by Cowan, Liebowitz & Latman; and workshop sponsorship by Dance Giant Steps.

Introduction

This compact was written to articulate and mediate the working artistic relationship between dancers and choreographers. Above all else it seeks to promote communication and respect among dancers and choreographers, and to enhance the creative act.

It is understood that no written compact can replace honest and thorough dialogue between dancers and choreographers. It is further understood that each artistic process and product is unique and ever changing, as are the participating dancers and choreographers.

The relationship between dancer and choreographer assumed by this compact is one where the choreographer is the primary visionary of a collective endeavor. It is understood that other relationships between dancer and choreographer exist. This compact may be referred to in such cases as well, however, additional adaptations will be necessary.

This compact refers only to dancers and choreographers. It is understood that dancers or choreographers might engage others to act on their behalf, such as a manager, administrator, or agent. In such cases, for the purposes of this compact the engaged individual's title may be substituted where appropriate.

The main body of this compact is designed as a set of guidelines for reference by dancers and choreographers at any and all stages of their careers--apprentice to veteran, emerging to established. Recommendations culled from numerous and varied perspectives have been made in an effort to stimulate creative problem solving between choreographer and dancer, and to foster solutions not yet envisioned by the authors.

Some recommendations and information contained herein may not be appropriate or realizable in a given situation. In this case, the dancer and choreographer may at their own discretion select and utilize the sections relevant to their particular circumstance or they may want to discuss other means toward reaching their mutual goal. Most importantly, such means must be agreeable to both dancer and choreographer.

The Compact is intended to provide recommendations for attaining an informed and productive working relationship between dancers and choreographers. It is not a substitute for the advice of an attorney or accountant. Choreographers and dancers should consult their attorneys or other professional advisers for specific legal guidance or other expert assistance. Although every attempt has been made to provide accurate and current information, the authors and publisher of this compact cannot be held accountable for the accuracy, completeness, or usefulness of any of the information set forth. Dancers Forum is not responsible for resolving any conflicts or controversies that may arise as a result of use of this compact.

In conclusion, dancers and choreographers together must insure that they work in a manner that addresses the well-being and dignity of all involved in the act of creating dances. The Compact, drafted by choreographers and dancers with support from educators, administrators, managers, critics, agents, and lawyers is offered voluntarily toward that end.

- I. Process and Product. The artistic process and product reside primarily in the acts of rehearsing and performing. For both choreographers and dancers, rehearsing and performing are the essence of a professional career. Awareness of the following aspects of artistic and related activities is necessary throughout.
- A. Inside the Studio/On the Stage. The choreographer is responsible for directing the artistic process and product in a professional manner. The dancer is responsible for rendering the forms taken by the artistic process and product in a professional manner.
 - B. Outside the Studio/Off the Stage. In some cases ancillary activities involving education, outreach, fundraising, public relations, and management are necessary parts of the working relationship between dancer and choreographer. These include, among other things: auditions, benefit events, company meetings, photo shoots, lecture demonstrations, teaching, and other communication with the public.
 - C. Relating. The degree of comfort, receptivity, and cooperation, or lack thereof, demonstrated toward one another by dancer and choreographer, affects the experience and development of work. Each party is responsible for cultivating and maintaining a relationship supportive of the artistic process and product, and all other activities.
 - D. Six Steps of Communicating: 1) Discussing, 2) Understanding, 3) Identifying, 4) Agreeing, 5) Fulfilling, 6) Evaluating. The choreographer's and dancer's needs, expectations, and conditions both "inside the studio/on the stage" and "outside the studio/off the stage" should be clearly discussed and understood. Terms should be identified, agreed to, and fulfilled by both parties. During and after fulfillment, some form of evaluation should be undertaken together by both parties.
- II. Working Agreement. The specific working agreement between dancer and choreographer will be unique to each situation. In order to arrive at an agreement, it is recommended that the dancer and choreographer refer to and select from the following points for discussion. Ideally, each point will be addressed fully by both parties.

Discussion of the following items should occur prior to the beginning of activities. Once parameters are identified and agreed to with respect to the following items, they should be placed in writing and a copy retained by both parties for reference at all stages of the working relationship.

A. Points of Discussion

1. Activity. Identify the exact activity/ies to be engaged in by the dancer and choreographer. Activities may include the following: audition, rehearsal, performance, touring, education, administration, public relations, fundraising, and/or other non-dance activities.
2. Date of Activity
 - a) Identify the start and end dates, and dates of all activity in between.
 - b) Distinguish between pending and confirmed dates.

3. Schedule of Activity
 - a) Identify the hours of activity, e.g., morning or evening rehearsals, afternoon or evening performance, etc.
 - b) Identify the days of the week of activity, e.g., only Monday, Wednesday, and Friday or every day of the week.
 - c) Where appropriate identify daily and weekly minimum and maximum hours of activity.
4. Location of Activity
 - a) Identify the location of activity, including the telephone number and address.
 - b) Identify the conditions of the facility, e.g., size, cleanliness, availability of heat and air conditioning, showers, etc.
5. Form of Compensation
 - a) Identify the forms of compensation, e.g., monetary and/or non-monetary.
 - b) Identify compensation for each activity, e.g., rehearsal and/or performance compensation.
 - c) Identify all legal documentation necessary for compensation to be received.
[See also item III. E., Legal Working Status and Addendum II: Discrimination and Harassment in the Workplace.]
6. Schedule of Compensation
 - a) Identify the date compensation will be made available.
 - b) Identify the manner in which compensation will be delivered, e.g., in person or mail, cash or check.
7. Fringe Benefits. Identify all fringe benefits to be provided, e.g., workers compensation, unemployment and disability insurance, pension, paid vacation, classes, etc.
8. Medical Expenses. Identify how work-related medical expenses will be handled. The possibilities may be a function of the structure of the relationship, individual circumstances, and pre-existing health coverage.
9. Reimbursements
 - a) Some work-related expenses incurred by a dancer may be reimbursable by a choreographer, e.g., travel, classes, personal attire, equipment, etc.
 - b) Reimbursable expenses should be clearly discussed and understood in advance by both parties.
 - c) Reimbursements require the furnishing of receipts and should be made in a timely manner.
10. Travel
 - a) In the event of travel, significant planning, organization, and coordination are required by both choreographer and dancer.
 - b) Details of performing, rehearsing, and other activity on the road are best addressed in advance.
 - c) Details of itinerary, transportation, housing, and food are best addressed together in advance.
[Note: For more on travel see Section VI., Touring.]

- B. Flux and Flow. Aspects of the above issues may not be clear in advance to either or both parties. The sooner information is available and shared with all involved, the better. Both parties should make clear when such information is likely to be available.
 - C. Interruptions. Each party should adequately notify the other in the event that unforeseen circumstances make it impossible to honor agreed upon parameters.
- III. Working Conditions/Quality of Life. Ideal working conditions and quality of life are oftentimes determined individually and subjectively. Nonetheless, the following items are offered in the effort to promote some general standards with respect to these two comprehensive headings.
- A. Safety. Choreographers are responsible for making their best effort to safeguard the health and well-being of dancers. At no time should dancers be put at risk due to adverse working conditions or unreasonable expectations. The dancer must be committed to taking care of his or her own health and well-being. Dancers are furthermore responsible for speaking up about their physical needs and conditions and for making clear and reasonable requests of the choreographer regarding such needs and conditions.
 - B. Credit and Acknowledgment. The choreographer is responsible for accurately identifying and stating each individual's involvement in creating and presenting the artistic product. Among the terms used to describe the varying processes used are the following: "choreographed by," "directed by," "conceived by," "created by," "in collaboration with," "with input by," "performed by," "danced by," "originally performed by," and "originally danced by." The choreographer should use her or his best efforts to ensure that credit and acknowledgment appears in programs, press releases, photos, videotapes, and related marketing materials. In cases where a work is remounted after some or all of the original dancers have left the work, the original performers and their role in the process should continue to be acknowledged in the above stated materials.
 - C. Image. The choreographer is responsible for securing permission to use the image of the dancer in all promotional materials, including photos, videos, etc. It is recommended that a simple release form be used for each dancer to sign in connection with any photo or video shoot. Such a release would typically grant the choreographer or company the right to continued use of the dancer's image for "non-profit" archival and marketing use in return for a promise to revisit the agreement if commercial or "for-profit" use of the image is proposed.
 - D. Appearance. Issues involving personal appearance on stage, e.g., nudity, costuming, body hair, and body adornment, should be addressed early in the working process. The dancer should be given opportunity to voice his/her concerns about personal appearance, and the choreographer should voice his or her views about how personal appearance relates to artistic intent.

- E. Legal Working Status. Each party to a working agreement is responsible for clarifying and understanding the parameters entailed in special circumstances defining when, how, and where a dancer is engaged. Special circumstances might arise due to a dancer's age, student or apprentice status, citizenship, visa status, and even tax status. Choreographers should be mindful in cases involving foreign nationals that their position as immigrants or visitors might make them legally or financially vulnerable to exploitation. Competent legal advice should be sought in any ambiguous circumstances.
 - F. Discrimination. Dancers and choreographers should adhere to federal, state, and local laws regarding discrimination. [See also Addendum II: Discrimination and Harassment in the Workplace.]
 - G. Harassment. Dancers and choreographers should adhere to federal, state, and local laws regarding harassment. [See also Addendum II: Discrimination and Harassment in the Workplace.]
 - H. Working with Multiple Choreographers. The choreographer is responsible for articulating in advance his or her policy with respect to dancers working with multiple choreographers. If the policy accommodates such arrangements, the choreographer is responsible for showing the same degree of flexibility toward a dancer's other dance commitments that are shown toward non-dance commitments. If a dancer is working with multiple choreographers, s/he is responsible for honoring her or his commitment to each choreographer fully.
 - I. Family and Medical Leave. With respect to maternity/paternity issues, dancers and choreographers should work together to develop strategies appropriate for both parties. [See also Addendum II: Discrimination and Harassment in the Workplace.] There should be clarity regarding family leave policy, including an understanding about the length of time one can be absent from a process and still return to it. Similar considerations apply to absences due to medical or other emergencies involving dancer, choreographer, and/or family members.
 - J. Temporary or Indefinite Leave. When a choreographer or dancer takes a leave of absence from a working relationship, issues of the working relationship, e.g., compensation, etc. need to be discussed with the relevant party/ies.
 - K. Departure/Transition. In the event of a departure by a dancer, s/he is responsible for giving adequate notice to the choreographer so that a replacement may be found without causing undue hardship. Transition of roles and responsibilities between new and departing dancers should be discussed. In the event of a dancer being let go, the choreographer likewise is responsible for giving adequate notice to such dancer so as not to cause undue hardship. Ideally, in an evaluative process prior to termination the choreographer would have revealed to the dancer problematic aspects of their working relationship.
- IV. Rehearsal. Expectations, needs, and conditions surrounding all rehearsals must be clearly defined and agreed to by both parties. It is recommended that dancers and choreographers refer to and select from the following points for discussion. Discussion and understanding of the following points should occur prior to the beginning of activities, placed in writing, and copies retained by both parties.

- A. Scheduling. Scheduling. Ideally, schedules should be established before the start of a project. Both the dancer and choreographer are then committed to honoring the schedule. Given that dancers and choreographers both often have outside work commitments, honoring the schedule is in their mutual interest. The discussion might include the following:
 - 1. Length of rehearsal period.
 - 2. Number of rehearsals: per week and/or month.
 - 3. Weekly schedule: days and hours.
 - 4. Location of all rehearsals: address and phone number.
 - 5. Procedures for accommodating changes in rehearsal schedule.

- B. Rehearsal Attendance Policy
 - 1. The choreographer should develop a policy for dealing with absent or tardy dancers.
 - 2. The policy should be shared at the start of a rehearsal period.
 - 3. The choreographer is responsible for applying the policy fairly and equitably to all.
 - 4. The dancer is responsible for honoring the rehearsal policy established by the choreographer.

- C. Rehearsal Preparedness
 - 1. The dancer is responsible for being prepared for each rehearsal. The choreographer must determine what constitutes preparedness and make it explicit in advance. Preparedness generally entails the following:
 - a) Retention and review of material from previous rehearsals.
 - b) Physical, mental, and emotional soundness.
 - c) Adequate training to meet the technical demands of the material.
 - 2. The choreographer is also responsible for being prepared for each rehearsal.

- D. Breaks, Warm-up, and Cool-down
 - 1. There should be a discussion between choreographer and dancer/s regarding breaks, warm-up, and cool-down. Each party should state their individual needs.
 - 2. Policy covering these issues should be mutually developed and adhered to with deference to the choreographer's artistic needs and the dancers' well-being.

- E. Rehearsal Etiquette
 - 1. Issues of etiquette, such as eating, chewing gum, chatting, and guests of the dancer and choreographer, including children and pets, should be fully discussed by choreographer and dancer/s.
 - 2. Policies covering these issues should be mutually developed with deference to the choreographer's artistic needs and the dancers' well-being.

- V. Performances. Expectations, needs, and conditions surrounding all performances must be clearly defined and agreed to by both parties. It is recommended that dancers and choreographers refer to and select from the following points for discussion. Discussion and understanding of the following items should occur prior to the beginning of activities, placed in writing, and copies retained by both parties.

It is understood that contractual relations with third parties such as presenters and agents govern some conditions surrounding performance engagements. Dancers and choreographers expectations and needs may be affected by conditions set by such third parties.

Choreographers must be aware of the extreme demands placed on dancers performing for a public, and be as clear and reasonable as possible regarding work requirements. Dancers must be equally aware of the unique and often unexpected demands placed on choreographers by performance engagements, and thus be as willing as possible to fulfill the choreographer's requests.

On the occasion of a performance, the dancer and choreographer each in their respective role represent the art form to the public and will do so with the utmost professionalism at all times. The dancer has the added responsibility of representing the choreographer, both onstage and off.

The dancer and choreographer must communicate immediately with each other regarding any problems, complications, and conflicts related to the performance. Both must do so in an appropriate manner that facilitates communication. Failure to do so may contribute to undue stress upon all parties before, during, and after the engagement.

- A. **Repertory and Casting.** The choreographer is responsible for determining and communicating to the dancer/s in a timely manner the repertory to be performed and the casting for each night of a given event. Relevant information would address: Are there different programs for the engagement, e.g., Program A versus Program B? Are there different casts for different evenings? A printed program schedule with cast members listed may be useful. The dancer/s are responsible for adhering to the program schedule and knowing the repertory material for which they have been cast.
- B. **Performance, Rehearsal, and Tech Schedule.** The choreographer is responsible for determining and conveying to the dancer the schedule of activities related to the engagement. The dancer is responsible for adhering to the schedule.
- C. **Engagement Logistics.** The choreographer is responsible for determining and communicating the following:
 1. Venue name, location, and type, e.g., festival, showcase, extended run.
 2. Facility type, e.g., proscenium, black box, studio, etc.
 3. Facility specifications, e.g., dimension, wings, cross-over, floor surface, etc.
 4. Facility accommodations, e.g., dressing rooms for male and female, running water, bathrooms, showers, cleanliness, etc.
 5. Audience capacity and demographic.
- D. **Non-dance requirements, such as education, public relations and fundraising activities.** The choreographer is responsible for determining and conveying any such activities, including when and where such activities will occur, transportation to activities, who is to participate, how they are to participate, whether participation is mandatory or voluntary, etc.
- E. **Interaction with Venue Personnel.**
 1. **Introductions.** The choreographer should introduce the dancer/s to the venue staff and crew by name. This should include a brief description of responsibilities of each staff and crew member.
 2. **Communication.** There should be clarity about the line of communication should questions or problems arise. For example, should the dancer bring a question to a crew member of the venue or to the choreographer who then relays the question to a crew member?
 3. **Securing Valuables.** The choreographer is responsible for determining with the venue staff/crew some means to secure dancers' valuables while they are performing on stage.

4. Complementary or Discount Tickets. The choreographer is responsible for determining and conveying to dancers the availability of complimentary and discount tickets.

F. Pre- and Post- Performance Clean up. The choreographer is responsible for coordinating all pre- and post-performance clean up, e.g., costume maintenance and storage, set up and storage of props and sets. The dancer is responsible for facilitating in a cooperative manner all pre- and post-performance clean up. Both parties need to discuss in advance the details of their pre- and post-performance clean up.

VI. Touring. Performances requiring travel by choreographer and dancer entail considerations in addition to those covered in the previous Section V., Performances. Please refer to the following points of discussion. As stated earlier, these items should be discussed, agreed to, and placed in writing prior to the beginning of activity.

A. Itinerary

1. The choreographer is responsible for identifying in advance the exact course, date, and time of travel to all sites, from the point of departure to the point/s of destination to the point of return. Furthermore, contact information for each point of destination should be given to the dancer by the choreographer in advance.
2. The dancer is responsible for adhering to the itinerary as determined by the choreographer.
3. Exceptions must be agreed to in advance by both parties.
4. Any given itinerary will impact working conditions for the dancer and choreographer. In order to optimize working conditions, plans should be discussed in advance. Often the dancer and choreographer can effectively trouble-shoot together with respect to working needs on the road, which may differ from those at home.

B. Residency Activity

1. The choreographer is responsible for identifying the activity entailed in each touring performance engagement. Such activity is commonly referred to as "residency activity" and might include the following: performance, class, lecture demonstration, open rehearsal, pre- and post-performance discussion, receptions, etc.
 - a) Specifics regarding location, date, time, and duration of each residency activity should be made clear in advance.
 - b) Individuals involved in each residency activity should be identified in advance.
2. The dancer is responsible for participating in all residency activities, unless otherwise determined by the choreographer.

C. Work on Travel Days

1. The choreographer should be sensitive to the fatigue caused by travel, which can lead to injury, and therefore avoid scheduling activity on travel days.
2. The dancer should understand that, due to costs or other factors, activities may be required in some situations on a travel day.

D. Days Off during Multi-week Touring and Engagements

1. The choreographer should schedule at least one day off for every six days of work in order to avoid fatigue and injury. Exigencies of touring however may require travel on such days.
2. The dancer should utilize the day off for rest and recreation in a manner that does not cause conflict with touring engagement activity.

E. Transportation

1. The choreographer is responsible for planning, coordinating, and paying for all transportation to and from the tour site (including to and from airport), as well as for all work-related travel in the tour city (including to and from hotel, performance venue, and residency activities).
2. Provisions for transportation should take place prior to the beginning of the tour.
3. The dancer is responsible for adhering to all transportation provisions in a timely, considerate, and cooperative manner.
4. Should the dancer elect to modify her or his transportation with the agreement of the choreographer, the dancer is responsible for any additional costs.

F. Travel Reimbursement

1. There should be clarity regarding reimbursable expenses. Generally the choreographer should reimburse the dancer for expenses such as the following: bus fare to and from the airport, taxi fare to and from the theater, etc.
2. Reimbursable expenses may be "capped." For example, the choreographer agrees to give the dancer a maximum travel allowance for getting to the airport. The dancer chooses his or her mode of transportation, paying or banking the difference.
3. The choreographer is not responsible for incidental expenses incurred by the dancer, e.g., hotel room service, in-room movies, phone, or laundry, unless otherwise agreed to in advance.
4. For reimbursement to occur, the dancer must provide receipts for all reimbursable expenses.

G. Housing

1. The choreographer should provide housing for the dancer on the road.
2. The dancer should responsibly maintain all housing accommodations.
3. Conditions of accommodations may vary and should not cause undue hardship.
4. The choreographer might establish a housing policy regarding single and double rooms.
 - a) The practice of "capping" could be applied. Here, the choreographer agrees to provide a double but a dancer requests a single room and makes up the difference in cost.
 - b) The practice of having a rotating single room for dancers may also be applied if there is an odd number of individuals to be housed.

H. Food/Health

1. The choreographer is responsible for providing a per diem payment for the dancer for each day s/he is away from home. In lieu of a per diem payment, the choreographer should provide three meals per day for the dancer for each day s/he is away from home.
2. The dancer is responsible for using the per diem for food and miscellaneous expenses incurred while away from home.
3. In the event that a presenter provides meals, the choreographer may provide an additional small daily sum or "walking around money."
4. If not already provided by presenters, the choreographer can request that information on local doctors, dentists, massage and physical therapists be made available to the dancer.

VII. Methods of Communication. As stated in the introduction, the overall goal of the Compact is to facilitate communication. Modes of communication will vary from one relationship to the next, from one circumstance or activity to the next. The following list of options for enhancing communication is neither exhaustive nor obligatory.

- A. Meetings. Regular meetings help facilitate all aspects of the working process. The meetings can be used to address issues voiced at rehearsals, upcoming business matters, performing and touring logistics, etc. For some, meetings ideally take place outside of rehearsals so as not to encroach upon creative time.
- B. Stating Goals. A choreographer may state at the beginning of a rehearsal what s/he hopes to accomplish or work on during that session.
- C. Time Out. If, in the course of a rehearsal process, any individual feels she or he is being pressed beyond their physical or emotional limit, that person has the option of requesting a break or time out.
- D. Checking In. This can happen in the first five minutes of a scheduled rehearsal period. Individuals are encouraged to bring up pertinent work-related concerns such as injury, illness, scheduling, etc. If something voiced calls for extended conversation, a future time to do so, such as over the phone later that day, should be scheduled.
- E. Evaluations. A friendly yet substantive evaluative process may be extremely useful for both dancer and choreographer. It provides a rare opportunity to connect in a way different from that experienced in studio, stage, or casual exchanges. Criteria for the conversation should be established in advance. There should be opportunity for each party to speak at length about their experiences, what is working, what isn't working, etc. Adequate weight should be given to artistic as well as business matters. Evaluations might take place at the beginning of a new project or a new phase of a project, annually or semi-annually.
- F. Dancer Representative to the Choreographer. In working situations where there are several dancers, one may be elected or selected to represent dancers' concerns. That person acts as an intermediary, facilitating communication and understanding. This arrangement entails significant responsibility and commitment on the part of the dancer representative.
- G. Governance. In cases where company structure is in place, it is to the mutual advantage of dancers on the one hand and company directors (board members, trustees, advisors) on the other to understand each other's processes and concerns. This may be accomplished in various ways: informal meetings and social events, dancer participation at company directors meetings, dancer representation, i.e. decision making at company directors meetings.

Addendum I: Approaches to Conflict Resolution

by Jackie Goodrich, Associate of the Center for Mediation in Law

- I. What is conflict? For the purposes of this document, conflict is defined as a dispute between choreographer and dancer that is, or has the potential to become, detrimental to the working process and relationship. (NOTE: The content of this section can, of course, be applied to other working relationships in the dance community, such as those between or among dancers, or between dance companies and their boards of directors, or between artistic and managing directors, to name a few.)
- II. Addressing conflict. To support good working relationships, it is helpful to address conflict as it arises. Otherwise, chronic tensions can develop and communication may deteriorate, resulting in unpleasant, unproductive, and even hurtful working conditions. It is also the case that conflict does not have to be a stumbling block in relationships; it can play a constructive role in clarifying what each person involved feels is important, thereby improving communication and helping to provide a basis for a resolution that can work for all involved.

Whoever feels affected by a conflict, whether directly or indirectly, can suggest that it is a matter that needs to be addressed. However, to resolve conflict effectively it is essential that those involved be willing to engage in a dispute resolution process of some sort.

Below are several approaches to addressing a conflict. As listed, they progress from more informal and inexpensive to more formal and more costly. Each approach is briefly discussed to give a general understanding. [For further information about any of these approaches, including the names of organizations or individual practitioners who provide mediation, arbitration, or legal services of other kinds (such as negotiation, litigation, or counsel), please contact Dancers Forum.]

- A. Direct discussion. Ideally, the first step for those involved in a conflict is to discuss the situation with one another. If there is need for additional information or if one or more of those involved could benefit from participation by others (for example, to provide counsel or emotional support), it may also be helpful to include them in the discussion, provided this is mutually agreed upon.

How people discuss a dispute can be as important as whether they discuss it. For guidance in conducting respectful, productive discussions of matters involving conflict, please contact Dancers Forum.

- B. Informal facilitation. If the conflict cannot be resolved satisfactorily through direct discussion, the next step might be to bring in a mutually agreed upon third party (for example, another member of the dance community), who could play a neutral role in helping the parties discuss their situation. Or it may be more appropriate to consult someone trained in conflict resolution. In that case, the next approach to try might be mediation.
- C. What is mediation? In general, mediation is a process in which a “neutral,” the mediator, helps disputing parties (and, if desired, their advocates or representatives) negotiate a resolution. Mediation may take place in a single meeting or over the course of several meetings. It is a voluntary process in which the mediator assists and supports the parties' own efforts to work through the conflict toward a mutually agreed upon solution. In mediation, the parties themselves determine the outcome and, working together, are able to fashion a resolution of their own design that fits their particular circumstances. The basis for settlement may include, but is not

necessarily limited to, consideration of applicable law. Other factors of importance to the participants, such as concern for their relationship or a desire for fairness, can become essential guides in shaping the resolution.

A mediator cannot impose or mandate an agreement. Nor does s/he weigh evidence, determine the accuracy of what the parties present, or judge which party is right and which is wrong. Rather, the mediator's role is to clarify what the parties express (explicitly and implicitly, verbally and nonverbally), help them identify and explore the issue(s) in dispute, facilitate understanding of their points of view and the reality they face, (including possible legal ramifications), and help them develop possible solutions.

As important as the mediator's neutrality is to a successful mediation, equally essential is the parties' willingness to participate--in terms of the initial decision to mediate, and also throughout the entire process. If at any point either party feels it no longer makes sense to continue the mediation, s/he may freely withdraw without penalty to any of the parties.

The elements of a conflict can be relatively simple or quite complex. Often, strong emotions can interfere with the parties' ability to speak or listen effectively. In some cases, a power imbalance between the parties may play a role. Whatever the nature of the difficulty, a skilled mediator can facilitate the discussion in ways that protect the fairness of the mediation process and the safety of the participants.

If the mediation process does not result in an agreement acceptable to the parties, each retains the capacity to pursue other options for resolving the dispute, with no negative effects from having tried the mediation approach. (See Sections II.D. and III. below.)

There are different models of mediation, and individual mediators bring to the process their personal styles and temperaments. Therefore, it is recommended that, in considering mediation, the parties choose a mediator and mediative approach that best suits them and their situation. Dancers Forum can provide the names of organizations and individuals that provide mediation services, identifying those with a background or interest in arts-related work.

In this regard, a primary resource is the Center for Mediation in Law (CML), a non-profit organization with which Dancers Forum has developed a relationship. Since 1981, CML has conducted training programs in its understanding-based model of mediation. A principal focus of this approach is to help those involved in a dispute gain a fuller understanding of their own point of view and that of the other party as a basis for resolving the dispute.

- D. What is arbitration? In arbitration, parties to a conflict agree to refer their dispute to one or more impartial persons--the arbitrator(s)--who will determine a resolution. Arbitration may be non-binding or binding. Non-binding arbitration leaves open the option of pursuing other means of addressing the dispute if one of the parties does not accept the arbitrator's decision. Binding arbitration conclusively settles the dispute; the arbitrator's decision is final and cannot be appealed. Parties who agree to submit a case to binding arbitration do so with the commitment to adhere to the decision rendered by the arbitrator.

The process of arbitration is similar to, though somewhat less formal and potentially less antagonistic than, a court proceeding with the determination based on a finding of facts and the application of law. In addition, the arbitration process is private and confidential. The arbitrator

conducts a hearing, much as a judge conducts a trial, in which the parties (and, if desired, their representatives or advocates) present their cases. The arbitrator hears the testimony of witnesses, weighs the evidence, considers each party's arguments, and elicits discussion of the remedy sought.

For an arbitration to be effective it is important that the parties approach the proceedings in a spirit of cooperation. For example, tactics sometimes used in contentious litigation, such as obfuscation of facts, attempts to delay, or a general lack of responsiveness and courtesy, can have an adverse effect on an arbitration proceeding.

Arbitrators are often retired or former judges or attorneys, who are referred cases within their particular areas of expertise, such as employment or intellectual property. For the names of organizations that provide arbitration services, please contact Dancers Forum.

III. In conclusion. If the parties are unable to reach resolution of the conflict through the approaches discussed above, they may wish to consider other means, including initial (or further) consultation with legal counsel and the possibility of negotiation proceedings or even litigation. For the names of organizations or individual practitioners specializing in providing legal services to the arts community, please contact Dancers Forum.

Any dispute resolution process may result in continuation of, change in, or dissolution of the working relationship. However, the more cooperative approaches offer the best opportunity to maintain a mutually beneficial relationship, while more adversarial approaches make that outcome more difficult to achieve. Accordingly, Dancers Forum encourages those who have a dispute to first consider less adversarial means to resolve the situation. Whatever approach the parties choose to address their differences, Dancers Forum remains available as a resource to help build and support productive working relationships in the dance community.

Addendum II: Discrimination and Harassment in the Workplace

by Kenneth A. Margolis, Kauff, McClain & McGuire, L.L.P.
and Lisa E. Dayan, Kauff, McClain & McGuire, L.L.P.

I. Discrimination

A. Statutes. The basic laws governing Equal Employment Opportunity (“EEO”) in the work place are:

1. Title VII of the Civil Rights Act of 1964 (“Title VII”), Title VII of the Civil Rights Act of 1964 (“Title VII”), which prohibits discrimination on the basis of race, color, religion, sex, or national origin. Discrimination on the basis of pregnancy is sex discrimination;
2. The Equal Pay Act of 1963 (“EPA”), which prohibits wage discrimination on the basis of sex;
3. The Age Discrimination in Employment Act (“ADEA”), which prohibits discrimination against individuals age 40 and over;
4. The Americans with Disabilities Act (“ADA”), which prohibits employment discrimination against qualified individuals with disabilities and in some circumstances requires employers to make reasonable accommodations for qualified individuals with disabilities; and
5. The Family and Medical Leave Act (“FMLA”), The Family and Medical Leave Act (“FMLA”), which allows eligible employees to take up to twelve workweeks of unpaid leave in a 12-month period for the birth or placement for adoption or foster care of a child, to care for the employee's family member (spouse, child, or parent) with a serious health condition, or because of the employee's own serious health condition that renders the employee unable to perform his or her job functions.

[Note: States and municipalities also have laws prohibiting workplace discrimination. For example, the New York State Human Rights Law and the New York City Human Rights Law also prohibit discrimination in the workplace.]

B. Key Concepts

1. Employers may not discriminate against applicants or employees because of their race, color, sex, national origin, religion, age, citizenship, veteran status, marital status, or disability. These are known as "protected categories." Sexual orientation is also a protected category under some state and municipal laws. Sexual orientation includes heterosexuality, homosexuality, or bisexuality.
2. These laws impose a duty to refrain from discriminating. Only certain government contractors have a duty to take affirmative action to increase the statistical representation of minorities and women in their workforce.
3. The EEO laws also prohibit harassment based upon a person's membership in a protected category, as more fully addressed below.

4. The EEO laws also prohibit employers from retaliating against an employee who has complained about discrimination.

II. Harassment

- A. Federal, state, and local EEO laws also prohibit workplace harassment based on an individual's sex, age, race, color, national origin, religion, disability, marital status, or any other basis prohibited by applicable local, state, or federal law. Prohibited harassment includes, but is not limited to:
 - 1) Verbal harassment, such as making a joke or comment that refers to a certain sex, age, race, color, national origin, religion, disability, marital status, or any other characteristic protected by applicable local, state, or federal law. Epithets, derogatory comments, vulgar or profane words and expressions, or slurs constitute other forms of verbal harassment;
 - 2) Physical harassment, such as unwelcome touching, assault, blocking, impairing, or otherwise physically interfering with an individual's normal work or movement;
 - 3) Visual forms of harassment, such as derogatory posters, cartoons, drawings, or computer screen savers; or
 - 4) Sexual harassment, such as unwelcome sexual advances or requests for sexual favors; verbal, visual, or physical conduct of a sexual nature, such as name calling, obscene jokes, sexually suggestive comments, or insulting sounds; graphic or verbal comments of a sexual nature about a person's anatomy; or displaying at work sexually suggestive objects, posters, drawings, or pictures. The victim as well as the harasser may be a man or a woman. The victim does not have to be of the opposite sex.
- B. Manners of Harassment. The above stated types of harassment might occur in the following manner:
 - 1) Quid Pro Quo (Latin, meaning something for something). This form of sexual harassment occurs when an employee's or applicant's submission to or rejection of a sexual advance is used as the basis for an employment decision (e.g., termination, promotion, hiring, wage increase); or
 - 2) Hostile Environment. This form of harassment arises when unwelcome sexual conduct or conduct based upon a person's membership in a protected category (i.e., race, national origin, religion, etc.) creates an intimidating, hostile, or offensive working environment, even though it leads to no economic consequences such as a demotion, loss of a pay increase, etc.
- C. The "Reasonable Person" Standard. In determining whether conduct or statements are sufficiently severe to rise to the level of unlawful harassment, courts generally focus on the perspective of the victim. Harassment will be found to be unlawful if a "reasonable person" would consider the conduct complained of to be sufficiently severe or pervasive to alter conditions of employment and create an abusive working environment. The harasser's intent is not controlling. Therefore, a claim that "I was only kidding" or that "other people at work tell jokes like that" is not a defense. Because it is often difficult to predict what will be considered to be unlawful harassment, it is prudent to exercise good judgment and refrain from making

comments or overtures that could be misunderstood.

- D. Reporting Harassment. Anyone who believes that he or she has been subject to harassment by a supervisor, fellow employee, vendor, or any other person in connection with his or her employment should use any employer complaint or grievance procedure to report the conduct.

Once a complaint of unlawful harassment has been made or a supervisor has witnessed unlawful harassment, an employer has a duty to investigate, even if the employee says that he or she does not want anything to be done. The investigation should be centrally directed and coordinated by the Human Resources Department. Individual employees should not attempt to investigate or take corrective action on their own.

If an employer determines that unlawful harassment did occur, the employer must take prompt remedial action reasonably calculated to end the harassment. Such action may consist of one or more of the following:

1. Disciplining the harasser. Termination may be appropriate, but is not required in all cases;
2. Counseling the harasser;
3. Remedying any loss of employment or tangible job benefits denied to the victim;
4. Reassigning the harasser to avoid reoccurrence or retaliation; and
5. Transferring the complainant, but only if he or she wants to transfer voluntarily. Employers are prohibited from retaliating against employees who complain about harassment, and an involuntary transfer could be viewed as retaliation.

III. In conclusion. Prevention and communication are the best tools against unlawful discrimination and harassment in the workplace. Employers should clearly communicate to employees that discrimination and harassment will not be tolerated. Employees should promptly report any unwelcome discriminating and harassing conduct and should refrain from telling jokes or making statements that could be considered offensive.

Addendum III: Working Status, W-2 vs. 1099

by Ivan Sygoda, Director, Pentacle

The rules governing employment are complicated and sometimes self-contradictory. The following paragraphs cannot possibly answer all the relevant questions, but they can prompt choreographers and dancers to ask the right questions when the time comes.

The government defines two kinds of working relationships. A worker can be either a (salaried) employee (who receives a W-2 form at the end of the year to file with taxes) or a (fee-based) independent contractor (who receives a 1099 form for taxes). The distinction between the two is based on the issue of control. According to the federal government, if an employer tells a worker when and where to do what, the employer has “control” over the worker, thus making him or her an employee. In contrast, the worker acting as an independent contractor has control over when and where he or she does what. Furthermore, the independent contractor relationship assumes equality among the parties; each gives something in return for something else, usually defined by a written agreement. Regulations distinguishing between employee and independent contractor were created to protect workers from abuse, because with control comes the potential for abuse.

Problems arise from the disconnects between the perceptions of dance-makers and governmental authorities. For example, in spite of the above stated regulations, it has usually suited the dance field to think of itself as a collaborative enterprise of equals, each making a valuable contribution to a collective whole in a context that makes the profit motive seem irrelevant. The profit motive is irrelevant, but for other reasons. The existing employment regulations apply whether or not the enterprise is a non-profit organization with 501(c)3 status, whether or not there is much money at stake, and whether or not the working schedule is regular or sporadic.

The government insists that choreographers employ dancers because they tell the dancers when and where to show up, what to wear, what steps to dance. Compliance is expensive, because employment entails fringe benefits: unemployment insurance, workers compensation, and disability. The employer has to make contributions to these insurance programs on behalf of the employee. The exact percentages vary based on such factors as experience ratings, but one can assume that compliance costs about 25 percent of the amount earmarked for salaries. To pay the dancer a \$100 fee costs the choreographer \$100. To pay the dancer a salary of \$100 costs the choreographer \$125. A dancer who receives a \$100 fee puts \$100 in her/his pocket and deals with the tax consequences the following April 15. A dancer whose salary is \$100 pockets perhaps \$75 because of withholding taxes, social security, and other deductions. Compare and contrast: (a) \$100 in, \$100 out; (b) \$125 in, \$75 out.

While option (a) may seem appealing to both dancer and choreographer, the consequences of ignoring regulations, often penalties, fines, and back assessments, can be ruinous. The legal guidelines implied in option (b) are designed to protect dance professionals who contribute their share to the larger economic and social engine by providing the same basic safety net that workers in other industries receive.